



**VEHICLE AND AUTOMOTIVE
DISTRIBUTORS ASSOCIATION**

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Helping you drive Vermont's economy

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2020 VADA Annual Meeting Schedule of Events

Thursday, September 24th

Zoom Virtual Meeting

- 9:00 a.m. **Welcome & Announcements**
Executive Director Marilyn Miller
- 9:05 a.m. **The Honorable Phil Scott**
Governor, State of Vermont
- 9:45 a.m. **Commissioner Wanda Minoli**
Vermont Department of Motor Vehicles
- 10:00 a.m. **Director of Enforcement & Safety Tony Facos**
Vermont Department of Motor Vehicles
- 10:15 a.m. **Molly Gray**
Democratic Candidate for VT Lieutenant Governor
- 10:30 a.m. **Annual Meeting Call to Order**
President Bob Cody
Approval of 2019 Annual Meeting Minutes
Election of Directors and Officers
- 10:35 a.m. [General Richard A. Cody](#)

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REGISTRATION FOR NADA SHOW 2021 NOW OPEN

Attendee registration and housing are now open for NADA Show 2021, the Automotive Industry Event of the year, returning to New Orleans, Jan. 21-24. This latest installment of the Show will be the most important yet during this new era of business for dealers. Learn the latest strategies to navigate business disruptions from NADA Academy instructors, get legislative and regulatory updates from experts, share insights with top industry professionals, and shop the latest dealership tools and products at NADA Expo. The best hotel selections always fill up quickly. Visit nadashow.org today to secure your registration and start planning for this year's Show!

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IRS reminds businesses filing cash transaction reports about e-file option; batch filing now available

The [Internal Revenue Service](#) reminds businesses required to file reports of large cash transactions that e-filing is a fast, easy and secure option for filing their reports. Now, businesses can batch file their reports, which is especially helpful to those required to file many forms. Although businesses have the option of filing Form 8300, Report of Cash Payments Over \$10,000, on paper, many have already found the free and secure e-filing system is a more convenient and cost effective way to meet the reporting deadline. The form is due 15 days after a transaction and there's no charge for the e-file option.

Source: IRS

Editor's Note: More guidance for businesses, including dealers, about their cash reporting obligations is available through the IRS' [Reporting Cash Transactions Helps Government Combat Criminal Activities fact sheet](#).

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ABA PROMOTES ADOPTION OF NADA FAIR CREDIT PROGRAM

On 8/3/20, the [American Bar Association](#) approved a resolution that, in part, urges governments at all levels to:

Adopt laws and policies that promote the adoption of an enhanced nondiscrimination compliance system for dealer compensation for arranging and/or originating a vehicle finance contract by offering a safe harbor against pricing discrimination claims for dealers that faithfully implement the NADA/NAMAD/AIADA Fair Credit Compliance Policy and Program.

The resolution, which was co-sponsored by the ABA Section of Civil Rights and Social Justice, Section of State and Local Government Law, and the Commission on Homelessness, recommended "safe harbor" protection to dealers who faithfully adopt the NADA fair credit program in lieu of a recommendation that governments consider requiring dealer finance compensation to be in the form of a non-discountable fixed fee. This was one of several significant improvements to the original resolution, which sought to impose a series of new duties and restrictions on the dealer finance office.

Today's action represents the latest recognition by a diverse and growing number of public and private groups of the value of the optional NADA fair credit program as an effective mechanism to address fair credit concerns while preserving competition in the marketplace. The program, along with supporting materials, is available at www.nada.org/faircredit. NADA continues to encourage dealers to consider, in consultation with their counsel, whether to adopt this voluntary approach to fair credit compliance.

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GUIDANCE ON RECAPTURE OF EXCESS EMPLOYMENT TAX CREDITS

The IRS issued temporary and proposed [regulations](#) on the recapture of excess employment tax credits under the Families First Coronavirus Response Act (FFCRA), P.L. 116-127, and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, P.L. 116-136. The regulations cover the reconciling of advance payments of the acts' refundable employments tax credits and authorize assessments to recapture the credits, when necessary ([T.D. 9904](#) and [REG-111879-20](#)).

Eligible employers are entitled to receive a refundable credit equal to the amount of the qualified sick leave wages and qualified family leave wages they are required to pay under the FFCRA, plus allocable qualified health plan expenses. Subject to certain reductions for other credits, the credit is allowed against the employer's Social Security taxes and Railroad Retirement Tax Act Tier 1 taxes imposed on all wages and compensation paid to employees.

Source: *Journal of Accountancy*

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DEALERS WIN CRITICAL COURT DECISION AGAINST CDK, REYNOLDS & REYNOLDS

[Dealers](#) in Arizona scored a major victory late Friday when the U.S. District Court in Arizona ruled strongly in favor of a 2019 law that gives local dealerships greater ability to protect customer data that resides in dealer management systems.

Source: NADA

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Nancy Phillips Orchestrates Sale of Denecker Chevrolet in Middlebury, VT to Mackey Auto Group



Pictured from Left: Carrie Forbes, Tom Denecker, Nancy Phillips, Chris Mackey, Christopher Mackey

Nancy Phillips Associates is pleased to announce the sale of Denecker Chevrolet owned by Tom Denecker to Chris Mackey of Mackey Auto Group.

Mackey Auto Group is an up and coming New York and Vermont based regional group started by Chris Mackey whose first 25 years in the auto industry were spent as the CFO of a highly successful auto group specializing in luxury vehicles. Tom Denecker began his career in the auto industry selling cars in New York City. In 1992 he purchased a small Chevrolet dealership in Vermont and built it to its current state of high acclaim. Denecker Chevrolet is now housed in a new brand compliant facility and is consistently one of the highest volume Chevrolet dealerships in the state of Vermont.

The new dealership will be known as Middlebury Chevrolet and will be operated by the father and son team of Chris and Christopher Mackey while Tom Denecker himself will remain in place as General Manager.

Nancy Phillips Associates (nancyphillips.com) specializes in sales, acquisitions and evaluations of franchised automobile dealerships throughout the Northeast.

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NADA Joins Advocacy Groups to Fight for PPP Tax Fairness

In response from inquiries and regional dealer associations about the potential loss of tax-deductible status for Paycheck Protection Program expenses, the National Automobile Dealers Association [has joined more than 180 other trade associations and advocacy groups](#) in requesting that Congress clarify that expenses related to forgiven PPP loans are tax-deductible.

Recently, the Treasury Department interpreted that forgiven PPP loans and their related expenses would not be tax-deductible, seemingly undermining the expressed goals of both Democrats and Republicans in Congress who worked on the program authorized by the CARES Act.

The Democratic-controlled House passed the HEROES Act in May, which, in addition to providing more than \$3 trillion in additional stimulus spending, would have explicitly provided full deductibility for PPP loan expenses. While the Republican-led Senate has not taken up the HEROES Act, and remains in discussions with House leaders and the Trump administration, GOP leaders are also said to be supportive of making PPP expenses tax deductible.

The letter that NADA joined urges Congressional leaders from both chambers, and both parties, to include full PPP deductibility in the next stimulus bill, which would override any Treasury Department interpretation.

We appreciate NADA's hard work on securing a legislative fix in Congress before the end of 2020. We will provide updates on any additional stimulus bills that pass both chambers of Congress, along with additional details on the tax-deductible status of PPP-related expenses.

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U.S. DOL Says OEM Incentives Can Count Toward Minimum Wage

Earlier this summer, the U.S. Department of Labor [issued an opinion](#) that, in most cases, auto dealerships can include OEM incentive payments towards their requirements to pay nonexempt sales employees the standard state/local minimum wage in their jurisdiction.

Likening the OEM incentive payments to tips, the DOL stated that, when third-party incentives are included (either explicitly or implicitly) as part of an employment agreement and communicated to a worker prior to performing sales duties, they can count towards a minimum wage obligation.

We encourage all dealers to include language related to third-party incentives in standard employment agreements for sales personnel, and to refer to the DOL opinion letter above as a way to establish a good-faith defense against potential wage disputes. NADA has also created a helpful guide to [federal wage and anti-discrimination compliance](#) (visible to members only), which we encourage you to review.

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NADA Files Additional Comments on FTC's Proposed Safeguards Rule Amendments

Last week, the National Automobile Dealers Association [filed a second set](#) of comments in response to the Federal Trade Commission's proposed changes to the [Gramm-Leach-Bliley Act](#) of 1999's Safeguards Rule.

According to the FTC, the Safeguards Rule, which took effect in 2003, "requires financial institutions to develop, implement, and maintain a comprehensive information security program." The FTC's latest [proposed rule change](#), which has been in development under both the Obama and Trump administrations, would update the rules to be in compliance with the DoddFrank Act of 2010 and the FAST Act of 2015, while requiring financial institutions to encrypt customer data, implement additional access controls to prevent security breaches, and require multi-factor authentication to access consumer data.

In the latest response to the rule proposal, NADA expressed support for both the broad goal of enhancing data security, and also for several specifics contained in the proposed rule change. However, the NADA letter did request that the FTC review the proposal and "conduct a thorough cost/benefit analysis" before implementing any changes. According to NADA, the rule change could cost dealers hundreds of thousands of dollars a year in both upfront and recurring costs.

NADA also requested that the FTC more thoroughly clarify what specific consumer data must be protected, and why it is necessary for institutions to do so. They also requested that the rule change expand and clarify the so-called "small business exemption," which according to NADA only excludes institutions with 5,000 or fewer customer records from some of the proposed rule's provisions. They also requested at least 12 months of lead time to comply with any rule changes, and at least 24 months for financial institutions to re-work past contracts and technical agreements with their current service providers.

VADA thanks NADA for their hard work throughout this rulemaking proposal, starting with their [first submission of comments](#) back in 2019. According to NADA's Regulatory Affairs Committee, there is currently no clear deadline for the FTC to act on this proposed rule.

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WORKERS' COMP SAFETY CORNER

Remind employees to keep flammable liquids in proper containers at all times. A metal wrench dropped on a concrete floor into spilled gasoline can easily start a catastrophic fire.

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Paycheck Protection Program forgiveness Process Outlined by SBA

A July 23, 2020 [Small Business Administration \(SBA\) Procedural Notice](#) outlines the process Paycheck Protection Program (PPP) lenders must use to review loan forgiveness applications. The Notice also indicates lenders may begin submitting loan forgiveness decisions to SBA on August 10, 2020.

Dealerships with PPP loans should review the SBA notice with their lenders and, as necessary, with their accountant and/or attorney to ensure they are compliant with all necessary requirements.

The loan forgiveness process begins when a PPP borrower files a [forgiveness application](#) (or [EZ forgiveness application](#)) with its PPP lender. A PPP borrower may file its application after it has used all loan proceeds for which it seeks forgiveness. The best time to file a forgiveness application will reflect a careful consideration of several factors related to maximizing loan forgiveness and ensuring that all required supporting documents are available. PPP lenders must review forgiveness applications in accordance with specified procedures and must work with borrowers to resolve any errors or omissions they identify.

A PPP lender may approve an application in full or in part, deny it, or deny it pending SBA review and has 60 days to issue its decision to SBA. SBA has 90 days after it receives a complete, error-free forgiveness decision to remit any loan forgiveness to the lender. The lender must then notify the borrower of the forgiveness amount, indicating when the borrower's first payment is due for any loan amount not forgiven.

A PPP borrower has 30 days to request its lender ask SBA to conduct a review of any denied forgiveness application. If SBA agrees to conduct such a review, it must notify the lender and the borrower of the outcome.

SBA may, at its discretion, decide to review any PPP loan to determine if a borrower was eligible to apply for a PPP loan, for the loan amount borrowed or for the forgiveness amount sought. SBA will notify the lender of any decision to conduct such a review, after which the lender has five days to both notify the borrower and to submit certain documents to SBA. SBA's procedural notice does not set a deadline for the conduct of such reviews but does indicate that borrowers will have a right to appeal unfavorable outcomes.

Note: NADA has provided additional PPP loan forgiveness information on the [NADA Coronavirus Hub](#), including [Guidance on the Use and Forgiveness of PPP Loan Proceeds](#), a recent [webinar](#) and [CARES Act FAQs](#).

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Most Telemarketer Fees to Access the FTC's National Do Not Call Registry to Increase in FY 2021

The Federal Trade Commission has announced FY 2021 fees for telemarketers accessing phone numbers on the National Do Not Call (DNC) Registry. Most of the annual fees will increase slightly from FY 2020, and are set forth in a proposed Federal Register notice. All telemarketers calling consumers in the United States are required to download the numbers on the National DNC Registry to ensure they do not call people who have registered their phone

numbers. The first five area codes are free to download, and organizations that are exempt, such as some charitable organizations, may obtain the entire list for free. Telemarketers must subscribe each year for access to the Registry numbers. Most FY 2021 Registry access fees will increase slightly based on the re-evaluation required by the Do-Not-Call Registry Fee Extension Act of 2007.

Source: FTC

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NADA Washington Conference - Virtual Register Online

Each year, NADA hosts the Washington Conference in September. This grassroots gathering of the automotive retailing industry highlights the top legislative and regulatory issues facing dealers, features key elected officials, and arranges Capitol Hill meetings with congressional representatives. PAA traditionally hosts a well-attended reception in which Pennsylvania dealers are provided the opportunity to meet with their elected officials.

Due to COVID-19, this year's conference will be held as a virtual series, highlighting the top discussions in Washington affecting the automotive industry today.

Tuesday, September 15

1pm-3pm ET - NextGen Dealer Program

Tuesday, September 21

1pm-3pm ET- Inside Washington Briefing

Wednesday, September 22

1pm-3pm ET - General Session

The "Inside Washington Briefing" on Tuesday will be hosted by NADA's legislative staff and the "General Session" on Wednesday will include a political update from Charlie Cook and Amy Walters, among others.

NADA dealer members are invited to attend the virtual series and can register online at www.nada.org/WashConf/

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